

Message Text

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DRAFTED BY: EB/ORF/FSE:FAMAU:CJR

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APPROVED BY: EB/ORF/FSE - MR. BENNSKY

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P 211952Z SEP 73

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

C O N F I D E N T I A L STATE 182055

THE FOLLOWING CABLE FROM SECSTATE WASHDEC DATED SEP 13, 73
TO ALL OECD CAPITALS, TRIPOLI CARACAS TOKYO
CAIRO BRASILIA JIDDA RIO DE JANEIRO KUWAIT TEHRAN
ABU DHABI ALGIERS TUNIS LAGOS JAKARTA IS
REPTD.

QTE C O N F I D E N T I A L STATE 182055

E.O. 11652: GDS

TAGS: ENGR

SUBJECT: OIL EXPROPRIATIONS: U.S. POSITION

FOR TRIPOLI

1. EMBASSY IS REQUESTED DELIVER TO LARG AS SOON AS POSSIBLE NOTE SET FORTH BELOW AND REPORT DELIVERY AND ANY LARG REACTIONS TO DEPARTMENT BY PRIORITY CABLE.

2. BEGIN TEXT: ... (AFTER COMPLIMENTS) AND HAS THE HONOR TO STATE THAT THE DEPARTMENT OF STATE HAS NOW REVIEWED THE NATIONALIZATION DECREE OF THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC THAT WAS MADE PUBLIC ON SEPTEMBER 1, 1973, AS WELL AS A REPORT OF COMMENTS THEREON OF PRIME MINISTER JALLUD. THAT DECREE SEEKS TO IMPOSE ON CERTAIN AMERICAN OIL COMPANIES OPERATING IN LIBYA (STANDARD OIL COMPANY OF
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CALIFORNIA, TEXACO INC., EXXON, MOBIL OIL COMPANY, ARCO

AND GRACE PETROLEUM) FUNDAMENTAL CHANGES IN CONTRACTUAL RELATIONS WITH LIBYA.

THE U. S. GOVERNMENT IS DEEPLY DISTURBED BY THE ABSENCE OF ANY INDICATION THAT THE GOVERNMENT OF LIBYA INTENDS TO PROVIDE PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION FOR THE FOREIGN INVESTMENTS AFFECTED BY THIS DECREE, AS REQUIRED BY INTERNATIONAL LAW. THE "NET BOOK VALUE" FORMULA FOR COMPENSATION DESCRIBED BY THE LIBYAN PRIME MINISTER IS FAR LESS THAN THE FAIR VALUE OF THE CONTRACT RIGHTS AND

PROPERTIES INVOLVED. ACCORDINGLY, IT DOES NOT MEET THE MINIMUM STANDARDS FOR COMPENSATION REQUIRED BY INTERNATIONAL LAW.

THE CONCESSION AGREEMENTS GOVERNING THE OPERATIONS OF THE OIL COMPANIES SPECIFICALLY PROVIDE THAT: "THE CONTRACTUAL RIGHTS EXPRESSLY CREATED BY THIS CONCESSION SHALL NOT BE ALTERED EXCEPT BY MUTUAL CONSENT OF THE PARTIES." THEY FURTHER PROVIDE FOR ARBITRATION OF DISPUTES NOT OTHERWISE SETTLED. ACCORDINGLY, FAILING FURTHER NEGOTIATIONS BETWEEN THE PARTIES ON THE BASIS OF RESPECT FOR THEIR CONTRACTUAL RIGHTS, THE PROPER REMEDY FOR THE CURRENT DISPUTES BETWEEN THE COMPANIES AND THE LIBYAN GOVERNMENT IS CLEARLY ARBITRATION. THE U.S. GOVERNMENT UNDERSTANDS THAT THE COMPANIES IN QUESTION HAVE REQUESTED ARBITRATION; IT EXPECTS THAT THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC WILL RESPOND POSITIVELY TO THEIR REQUEST SINCE FAILURE TO DO SO WOULD CONSTITUTE A DENIAL OF JUSTICE AND AN ADDITIONAL BREACH OF INTERNATIONAL LAW.

IN THIS CONNECTION, THE EMBASSY WISHES TO RECALL TO THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC THE STATEMENT MADE TO THE AMERICAN CHARGE AND TO OTHER DIPLOMATIC REPRESENTATIVES ON SEPTEMBER 1, 1969, BY A SPOKESMAN OF THE REVOLUTIONARY COMMAND COUNCIL THAT THE NEW REGIME WOULD FULFILL ALL ITS INTERNATIONAL OBLIGATIONS AND WOULD RESPECT THE RIGHTS OF THE PETROLEUM COMPANIES OPERATING IN LIBYA. IN THE VIEW OF THE GOVERNMENT OF THE UNITED STATES, THE EXPROPRIATION OF 51 PER CENT OF THE INTERESTS OF THESE AMERICAN COMPANIES OPERATING IN LIBYA WITHOUT

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RESORT TO ARBITRATION AND WITHOUT THE OFFER OF ADEQUATE COMPENSATION WOULD BE INCONSISTENT WITH THOSE ASSURANCES, INCONSISTENT WITH THE TERMS OF THE CONCESSION CONTRACTS, AND INVALID UNDER INTERNATIONAL LAW. END OF TEXT.

3. ALL OTHER ADDRESSEES ARE AUTHORIZED CONVEY SUBSTANCE OF FOREGOING NOTE TO RESPECTIVE HOST GOVERNMENTS. IN DOING SO, YOU SHOULD STRESS IMPORTANCE US GOVERNMENT

ATTACHES TO ARBITRATION AS APPROPRIATE WAY OF PROCEEDING
IN RESOLUTION SUBJECT NATIONALIZATIONS. REPORT REACTIONS.

4. DEPARTMENT DOES NOT RPT NOT PLAN RELEASE TEXT OF
NOTE TO PRESS, BUT WILL DESCRIBE SUBSTANCE IF ASKED.

5. FOR KUWAIT. SEPTTEL EN ROUTE. RUSH

UNQTE RUSH

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